

## REMARKS

### **1. *Informalities***

Defective Oath. Applicant appreciates the Examiner bringing to its attention the defects in the filed Oath or Declaration. In response, Applicant is submitting a newly executed Oath or Declaration to replace the one previously submitted, which is in compliance with 37 C.F.R. § 1.67(a).

Allowable Subject Matter. Applicant acknowledges and appreciates the Examiner's indication of allowable subject matter.

### **2. *Claim Rejections -- 35 U.S.C. § 102***

Claims 1 and 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,103,740 (hereinafter referred to as "the Masse patent" or "Masse").

In response, Applicant submits that Masse does not anticipate the claims of the present invention, as amended. Specifically, Applicant has amended independent claims 1 and 12 to include the limitation that the moveable weight is slidably mounted to a track on the frame and that the load-shifting device or mechanism is configured to move the moveable weight along the track. Masse, while disclosing a vehicle for road and rail operation, does not disclose a moveable mass that is slidably mounted to a track or to the frame of the vehicle. Although the Examiner contends that Masse discloses a moveable weight in the form of cargo to be placed on the cargo bed of the vehicle, and a load shifting mechanism in the form of a crane, Masse does not teach or disclose that the cargo, or moveable weight, is slidably mounted to a track on the frame. Instead, Applicant submits that the cargo in Masse is simply placed on the cargo bed and secured in place without a track, thus suggesting that the cargo is not intended to be moved and to comprise any type of weight shifting function, as does the moveable weight of the present invention. In addition, it is well known that cargo is not an integral component or feature of the vehicle, but is instead removable, in which doing so would leave the vehicle without a moveable weight at the road to rail or rail to road conversion, a time that particularly benefits such a feature. As such, applicant submits that Masse, as it does not disclose a moveable weight and a track, does not anticipate or render obvious claims 1 and 12 of the present invention and that these claims are in a condition for allowance.

Dependent claims 2-11 and 13-19 place further limitations on what is otherwise argued allowable subject matter. Therefore, Applicant respectfully submits that these claims also stand in a condition for allowance.

Based on the foregoing, Applicant respectfully requests that Masse does not anticipate any of the claims of the present invention. As such, Applicant respectfully requests that the rejection under 35 U.S.C. § 102 be withdrawn from consideration.

**3. *Claim Rejections -- 35 U.S.C. § 103***

Claims 2-4, 6, 8, 11, 13-15, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Masse. Applicant appreciates the concerns raised by the Examiner, but respectfully submits that in light of the amendment to the independent claims and remarks as set forth above, Masse does not render the rejected dependent claims of the present invention obvious, as these claims place further limitations on otherwise argued allowable subject matter. As such, Applicant respectfully requests that the claims of the application be reconsidered and that the rejection under § 103 be withdrawn.

CONCLUSION

Based on the foregoing, Applicant respectfully submits that the deficiencies in the application have been corrected and that the proposed claims are neither anticipated nor rendered obvious by the prior art reference cited by the Examiner. As such, Applicant believes that the claims are now in a condition for allowance, and action to that end is respectfully requested.

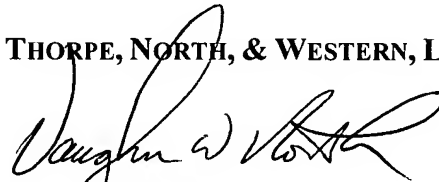
If any impediments to the allowance of this application for patent remain after the above amendments and remarks are entered, the Examiner is invited to initiate a telephone conference with the undersigned attorney of record.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 20-0100.

DATED this 4<sup>th</sup> day of May, 2005.

Respectfully submitted,

**THORPE, NORTH, & WESTERN, LLP**



Vaughn W. North  
Attorney for Applicant  
Registration No. 27,930

THORPE, NORTH, & WESTERN, LLP  
8180 S. 700 E., Suite 200  
Sandy, Utah 84070  
(801) 566-6633 telephone  
(801) 566-0750 facsimile

VWN/CLJ:tlt

H:\FILES\21000\21650\OA RESPONSE 050305.doc